

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

LEILANI LADAWN PEWITT, )  
Plaintiff, )  
v. )  
CAROLYN W. COLVIN, )  
Acting Commissioner of Social Security, )  
Defendant. )

) No. 3:11-cv-00586  
Judge Nixon  
Magistrate Judge Griffin

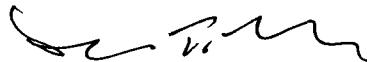
**ORDER**

Pending before the Court is a Motion for Award of Attorney Fees under 42 U.S.C. § 406(b) (“Motion”), filed by counsel for Plaintiff Leilani Ladawn Pewitt and requesting an award of \$19,051.50 in attorney’s fees. (Doc. No. 25.) On December 2, 2011, this Court reversed a decision by the ALJ denying benefits to Plaintiff and remanded the case to Defendant Commissioner of Social Security. (Doc. No. 18.) As a result, Plaintiff’s counsel received \$4,454.65 in attorney’s fees under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412. (Doc. No. 24.) Plaintiff’s counsel states that the Social Security Administration (“SSA”) has since awarded Plaintiff more than \$76,000.00 in past-due benefits and has withheld 25 percent of the award, or \$19,051.50, for attorney’s fees. (Doc. Nos. 26 at 1; 28 at 3; 28-1.) He now seeks to collect those fees in the Motion, which the Commissioner does not oppose (Doc. No. 29).

Accordingly, the Court **GRANTS** the Motion. However, attorneys may not recover both EAJA and § 406(b) fees in the same case and must refund the smaller amount to the plaintiff in the event that both fees are awarded. *Jankovich v. Bowen*, 868 F.2d 867, 871 n.1 (6th Cir. 1989). The Court **ORDERS** Plaintiff’s counsel to refund to Plaintiff the \$4,454.65 EAJA fee the Court previously awarded to Plaintiff’s counsel.

It is so ORDERED.

Entered this the 2<sup>nd</sup> day of July, 2013.



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JOHN T. NIXON, SENIOR JUDGE  
UNITED STATES DISTRICT COURT